

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

**LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON
PROPOSED PLAN CHANGE 14:**

CITY-WIDE QUALIFYING MATTERS

Dated: 11 October 2023

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions on behalf of the Christchurch City Council (**Council**) have been prepared for the hearing, during hearing week two, on the following sub-topics relating to city-wide qualifying matters (**QMs**):

- (a) Outstanding natural landscapes and features (**ONL / ONF**);
- (b) Sites of ecological significance (**SES**);
- (c) Sites of cultural significance (Wāhi Tapu / Wāhi Taonga, Ngā Tūranga Tupuna, Ngā Wai and Belfast Silent File) (**SCS**);
- (d) Water body setbacks;
- (e) Open Space Zones;
- (f) Specific Purpose (Ōtākaro Avon River Corridor) Zone, including Fitzgerald Avenue geotechnical constraint (**SPOARC**);
- (g) Specific Purpose (Cemetery) Zone;
- (h) Slope hazard areas (the Slope Instability QM); and
- (i) High flood hazard areas (the Flood Hazard Management Areas QM and Flood Ponding Management Area QM).

1.2 In these legal submissions, we provide an overview of the legal and planning framework and the Council's overall approach relating to the relevant city-wide QMs.

1.3 We then address each relevant QM, setting out:

- (a) the Council's approach to the QM in PC14;
- (b) the key issues arising from submissions and evidence; and
- (c) the Council's position, updated as relevant, in respect of the QM.

2. WITNESSES FOR THE COUNCIL

2.1 The relevant sub-topics and city-wide QMs are addressed by two s42a report authors:

- (a) Anita Hansbury is the s42A report author in respect of:¹
 - (i) ONL / ONF;
 - (ii) SES;
 - (iii) SCS;
 - (iv) Water body setbacks;
 - (v) Open Space Zones;
 - (vi) SPOARC; and
 - (vii) Specific Purpose (Cemetery) Zone;
- (b) Brittany Ratka is the s42A report author in respect of:²
 - (i) Slope hazard areas / the Slope Instability QM; and
 - (ii) High flood hazard areas / the High Flood Hazard Management Area and Flood Ponding Management Area QMs;

2.2 Ms Hansbury's rebuttal evidence addresses water body setbacks,³ while Ms Ratka's rebuttal evidence addresses flood hazards.⁴

2.3 Ms Hansbury and Ms Ratka also cover additional topics in their respective s42A reports and rebuttal evidence. They will only appear in respect of the topics listed above in hearing week two. They will reappear in other hearing weeks, as required, in respect of other topics.

2.4 The following technical experts address relevant matters and will give evidence at this hearing:

- (a) Nicholas Head (ecology; Mr Head's evidence relates to the SES QM);⁵

¹ s42A report of Anita Wieslawa Hansbury dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/11-Anita-Hansbury-Section-42A-Report-FINAL.PDF>.

² S42A report of Brittany Olivia Ratka dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/09-Brittany-Ratka-Section-42A-report-final.PDF>.

³ Statement of rebuttal evidence of Anita Wieslawa Hansbury dated 10 October 2023 available at <https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/11.-Rebuttal-evidence-Anita-Hansbury-10-October-2023.pdf>.

⁴ Statement of rebuttal evidence of Brittany Olivia Ratka dated 9 October 2023 available at <https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/09.-Rebuttal-Evidence-Brittany-Ratka.pdf>.

⁵ Statement of primary evidence of Nicholas John Head dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/26-Nick-Head-Statement-of-evidence-final.PDF>.

- (b) Marie-Claude Hebert (geotechnical; Ms Hebert's evidence relates to the SPOARC QM);⁶
- (c) David Little (landscape, red zone management; Mr Little's evidence relates to the SPOARC QM);⁷
- (d) Jesse Dykstra (geotechnical engineering; Dr Dykstra's evidence relates to the Slope Instability QM as well as liquefaction);⁸ and
- (e) Brian Norton (stormwater and flooding; Mr Norton's evidence relates to the High Flood Hazard Management Area and Flood Ponding Management Area QMs).⁹

3. SUMMARY

3.1 The city-wide QMs that are the subject of these hearings are, for the most part, non-contentious:

- (a) they are 'existing QMs' for the purpose of s77K and s77Q, and relate to matters that are explicitly listed in s77I and s77O, meaning the legal requirements for establishing these QMs are relatively straightforward;¹⁰
- (b) the limitations they place on development are appropriate, and they only limit development to the extent necessary to achieve their purpose;
- (c) they do not modify *status quo* rights (with minor exceptions discussed below that are more enabling than the *status quo*); and
- (d) they have attracted a limited number of submissions, mostly in support and with very few in opposition.

⁶ Statement of primary evidence of Marie-Claude Hebert dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/28-Marie-Claude-Hebert-Statement-of-evidence-final.PDF>.

⁷ Statement of primary evidence of David John Little dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/36-Dave-Little-Statement-of-Evidence-final.PDF>.

⁸ Statement of evidence of Dr Jesse Leif Dykstra dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/19-Dr-Jesse-Dykstra-Statement-of-evidence-final.PDF>.

⁹ Statement of primary evidence of Robert Brian Norton dated 11 August 2023 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/44-Brian-Norton-Statement-of-evidence-final.PDF>.

¹⁰ With one minor exception being private land in the SPOARC, addressed below.

4. LEGAL AND PLANNING FRAMEWORK AND THE APPROACH TO QMs

- 4.1 The statutory provisions relevant to consideration of an Intensification Planning Instrument (**IPI**) including PC14 are set out in the Council's Strategic Overview legal submissions dated 3 October 2023.¹¹ Those submissions address the general framework applicable to plan changes,¹² the framework specific to IPIs,¹³ and matters of scope (the permissible scope of an IPI and the scope of relief 'on' a plan change).¹⁴
- 4.2 The Strategic Overview legal submissions also set out the Council's overall approach to PC14, including in terms of QMs.
- 4.3 Those submissions are not repeated here, but we do briefly refer to:
- (a) the legal and planning framework for QMs, with a focus on the matters relevant to the city-wide QMs being considered in this hearing; and
 - (b) the use of QMs in PC14.

Framework for QMs

- 4.4 Through QMs, the Council may make the requirements set out in the MDRS or the relevant building height or density requirements under policy 3 of the NPS-UD less enabling of development.
- 4.5 Any restrictions must only be to the extent necessary to accommodate the QMs specified in 77I (residential areas) and 77O (non-residential areas), which, as relevant to this hearing, include:¹⁵
- (a) matters of national importance that decision-makers are required to recognise and provide for under section 6 of the RMA;
 - (b) matters required to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement;
 - (c) open space provided for public use; and

¹¹ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf>.

¹² Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraphs 2.1 to 2.9.

¹³ Paragraphs 2.10 to 2.47.

¹⁴ Paragraphs 2.48 to 2.85.

¹⁵ Section 77I (residential) and section 77O (non-residential).

- (d) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.¹⁶

Existing QMs

4.6 Sections 77K and 77Q provide an alternative evaluation process for existing QMs that are also specifically listed in sections 77I and 77O.¹⁷ This alternative process recognises these are already contained in the District Plan, and so have already been through the RMA Schedule 1 process.

4.7 These sections set out a five-step process for existing QMs:

- (a) identify by location where an existing QM applies;
- (b) specify the alternative density standards proposed;
- (c) identify in the section 32 report why the territorial authority considers that one or more existing QMs apply to those areas;
- (d) describe in general terms for a typical site in those areas affected the level of development that would be prevented by accommodating the QM, in comparison with the level of development that would have been permitted by the MDRS and policy 3 without the QM; and
- (e) notify the existing QM in the IPI.

The use of QMs in PC14

4.8 The Strategic Overview legal submissions and the s42A report of Sarah Oliver describe the use of QMs by the Council in PC14.¹⁸ The Council considers QMs to be a necessary tool to provide for 'density done well', and that all the proposed QMs have been properly justified.¹⁹ The QMs proposed by the Council are listed by Ms Oliver.

4.9 PC14 introduces a new sub-chapter 6.1A (Qualifying Matters) to the District Plan. That sub-chapter includes in Table 1 the District Plan provisions that

¹⁶ As per the Strategic Overview legal submissions for the Council, there is a different process to be followed for 'other' QMs. That is discussed below in respect of the private sites in the SPOARC Zone.

¹⁷ All QMs that are being considered in hearing week two are 'existing QMs' subject to this alternative process. The one exception is certain private land within the SPOARC, discussed in the SPOARC section of these submissions below.

¹⁸ Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraph 3.33 to 3.39; s42A report of Sarah Oliver, paragraphs 6.16 to 6.23, and 8.11 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-final.PDF> and a corrected version at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-With-corrections-10-October-2023.pdf>.

¹⁹ Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraph 3.34.

will apply in order to provide for the QMs. These are a mix of existing and new proposed provisions. The table provides a clear signal to all plan users of the continued operation of those provisions.

- 4.10 Most of the QMs, and the relevant provisions of the District Plan that provide for the QMs, will be addressed in later hearings. For ease of reference, **Appendix A** to these legal submissions includes a version of Table 1 of 6.1A with the QMs and relevant provisions being considered in hearing week two highlighted.
- 4.11 The relevant information for the QMs considered in this hearing week is set out in more detail in the Section 32 Report for PC14, specifically in Part 2 – Qualifying Matters Evaluation Report and associated appendices.²⁰ The relevant QMs are further described and, where necessary, elaborated upon in the s42A reports of Ms Hansbury and Ms Ratka.
- 4.12 In the remainder of these submissions we address each relevant QM in turn.

5. SITES OF ECOLOGICAL SIGNIFICANCE

Approach to Sites of Ecological Significance in District Plan

- 5.1 The District Plan contains an appendix of 133 Sites of Ecological Significance (**SES**) in two different schedules (Schedule A: Low Plains, Banks Peninsula and Port Hills, and Schedule B: Sites on Private Land).²¹ These sites are shown on the planning maps. SES are how Significant Natural Areas are described in a Christchurch context.
- 5.2 Provisions relating to SES are primarily set out in Chapter 9.1 of the District Plan, and the planning framework provides that the values of the SES should be protected. Sites on Private Land are shown for information purposes only at this stage and are not subject to the SES rules.

²⁰ In particular, Appendix 3 'Carry Over Qualifying Matters', Barker & Associates, 29 June 2022 available at <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32-Appendices-1/PC14-Notification-QM-BA-Carry-Over-Qualifying-Matters-s32-Appendix-3.PDF>. The Part 2 s32 report is available in three parts at <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32/Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-1.pdf> (Part 1), <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32/Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-2.pdf> (Part 2), and <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32/Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-3-15-March.pdf> (Part 3).

²¹ Appendix 9.1.6.1 available at <https://districtplan.ccc.govt.nz/pages/plan/book.aspx?HID=87738&exhibit=DistrictPlan> and Appendix 9.1.6.2 Schedule reference map available at <https://districtplan.ccc.govt.nz/pages/plan/book.aspx?HID=87738&exhibit=DistrictPlan>.

Proposed approach to SES in PC14

- 5.3 The SES QM is an 'existing QM' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:
- (a) the relevant provisions are set out in the operative District Plan; and
 - (b) SES are a matter of national importance that decision makers are required to recognise and provide for under section 6(c), which relates to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 5.4 SES typically, but not exclusively, fall outside of the urban residential and other zones affected by PC14. In some cases, the SES may overlap with residential zones.
- 5.5 The Council proposes through PC14 that the existing provisions relating to SES are retained (only applying to the parts of sites affected) in order to protect the relevant values from inappropriate development.

Submissions and evidence

- 5.6 As set out in the s42A report of Ms Hansbury:²²
- (a) there are a number of submissions in support of the SES QM;
 - (b) there are no submissions in opposition to the SES QM specifically;²³ and
 - (c) there are no submissions specifically seeking changes to the SES QM.
- 5.7 Mr Nicholas Head, for the Council, provided evidence explaining the rationale and process behind the identification of SES in the Plan.²⁴
- 5.8 One submission, from Trudi Bishop (155.3), seeks that no more development be allowed on the Port Hills adjacent to Bowenvale Reserve.²⁵ Mr Head explains the significant ecological values associated with the Bowenvale Reserve, and that development around Bowenvale Reserve (and other sites) increases the risk of ecological "*edge effects*".²⁶ However, Bowenvale Reserve is not currently scheduled as an SES, and Ms Hansbury confirms

²² s42A report of Anita Hansbury, paragraphs 6.18.1 to 6.20.6.

²³ Ms Hansbury identifies one submission – Hamish West (500.1) that opposes all QMs.

²⁴ Statement of primary evidence of Nicholas John Head dated 11 August 2023, paragraphs 32 to 36.

²⁵ Ms Bishop has not filed evidence.

²⁶ Statement of primary evidence of Nicholas John Head dated 11 August 2023, paragraphs 48 to 49.

(for the avoidance of doubt) that PC14 does not extend to creating a new SES for Bowenvale Reserve or any other location.²⁷

5.9 It is respectfully submitted that the Panel should recommended that the SES QM is adopted as notified.

6. OUTSTANDING NATURAL LANDSCAPES AND FEATURES

Approach to ONL/ONFs in District Plan

6.1 A number of ONLs and ONFs are identified in the District Plan through schedules (Appendix 9.2.9.1 and Appendix 9.2.9.2) and in overlays on the planning maps (Natural and Cultural Heritage layer).

6.2 Provisions relating to ONLs and ONFs are primarily set out in Chapter 9.2 of the District Plan, and the planning framework provides that the values of the ONLs and ONFs should be protected.

Proposed approach to ONL/ONFs in PC14

6.3 The ONL/ONF QM is an 'existing QM' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:

- (a) the relevant provisions are set out in the operative District Plan; and
- (b) ONLs/ONFs are a matter of national importance that decision makers are required to recognise and provide for under section 6(b), which relates to the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.

6.4 Most ONLs/ONFs fall outside of the urban residential and other zones affected by PC14. A notable exception are those rivers which pass through urban areas.

6.5 The Council proposes through PC14 that the existing provisions relating to ONLs/ONFs are retained (only applying to the parts of sites affected) in order to protect the relevant values from inappropriate development.

Submissions and evidence

6.6 As set out in the s42A Report of Ms Hansbury:²⁸

²⁷ s42A report of Anita Hansbury, paragraphs 6.20.2 to 60.20.3.

²⁸ Paragraphs 6.18.1 to 6.20.6.

- (a) there are a number of submissions in support of the ONL/ONF QM; and
 - (b) there are no submissions in opposition to the ONL/ONF QM specifically.
- 6.7 One submission, from Harvey Armstrong (244.7), seeks a change to the ONL/ONF QM. Harvey Armstrong seeks the removal of the ONL from 75 Alderson Ave. As Ms Hansbury explains, PC14 is not proposing a review of the extent of ONLs, but rather it simply proposes to apply the QM status to them. In any event, Ms Hansbury does not consider it appropriate to remove the ONL overlay from 75 Alderson Ave.²⁹
- 6.8 It is respectfully submitted that the Panel should recommended that the ONL/ONF QM is adopted as notified.

7. SITES OF CULTURAL SIGNIFICANCE (WĀHI TAPU / WĀHI TAONGA, NGĀ TŪRANGA TUPUNA / NGĀ WAI AND BELFAST SILENT FILE)

Approach to SCS in District Plan

- 7.1 Wāhi Tapu / Wāhi Taonga, Ngā Tūranga Tūpuna, Ngā Wai and Belfast Silent File sites, collectively referred to as Sites of Cultural Significance (**SCS**), are listed in the District Plan in Appendices 9.5.6.1 – 9.5.6.4. They are shown on a combination of the planning maps and aerial maps in Appendices 9.5.7.1 – 9.5.7.3.
- 7.2 Provisions relating to SCS are set out in Chapter 9.5 of the District Plan, and the planning framework provides that the values of the SCS should be protected.

Proposed approach to SCS in PC14

- 7.3 The SCS QM is an 'existing QM' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:
- (a) the relevant provisions are set out in the operative district plan; and
 - (b) SCS are a matter of national importance that decision makers are required to recognise and provide for under section 6(e), the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

²⁹ Paragraph 60.20.4.

7.4 The Council proposes through PC14 that the existing provisions relating to SCS are retained (only applying to the parts of sites affected) in order to protect the relevant values from inappropriate development.

Submissions and evidence

7.5 As set out in the s42A Report of Ms Hansbury:³⁰

- (a) there are a number of submissions in support of the SCS QM; and
- (b) there are no submissions in opposition to the SCS QM specifically.

7.6 One submission, from Carter Group Limited (814.245), seeks a change to the SCS QM, namely the removal of the SCS overlay from either side of Beachville Road, Redcliffs.³¹ The submitter states that it "*acknowledges the need to protect or appropriately manage areas or sites of cultural significance*", but that "*this should not preclude or constrain intensification that can incorporate appropriate measures to avoid effects on these sites*". No further details are provided, and no expert Māori cultural or other evidence has been filed in support of this submission.

7.7 As Ms Hansbury explains, PC14 is not proposing a review of the extent of SCSs, but rather it simply proposes to apply the QM status to them. Ms Hansbury does not consider it appropriate to remove the SCS overlay from Beachville Road.³²

7.8 It is respectfully submitted that the Panel should recommended that the SCS QM is adopted as notified.

8. WATER BODY SETBACKS

Approach to water body setbacks in District Plan

8.1 Some classified water bodies are identified on the District Plan planning maps and the maps in Appendix 6.11.5.4 Water Body Classification Maps. Network and hill waterways are not shown on either set of maps but are identified through their definitions in chapter 2 of the District Plan.

8.2 The District Plan specifies different water body setbacks, ranging from 5m (for network waterways) to 30m (for downstream waterways) within the

³⁰ Paragraphs 6.18.1 to 6.20.6.

³¹ As part of its overall submission seeking that the site be rezoned MRZ and that all overlays be removed from the site. The submission is available at

https://makeasubmission.ccc.govt.nz/getFileOpen.aspx?src=i&r=1&dRef=D1RIBD&_id=1696977280376.

³² s42A report of Anita Hansbury, paragraph 6.20.4.

General Rules and Procedures in sub-chapter 6.6. Earthworks, buildings and other structures including impervious surfaces are controlled within the setbacks and typically require a restricted discretionary activity consent.

Proposed approach to water body setbacks in PC14

8.3 The water body setbacks QM is an 'existing QM' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:

- (a) the relevant provisions are set out in the operative District Plan; and
- (b) a number of section 6 matters are relevant to water body setbacks, including:
 - (i) the preservation of the natural character of wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development (section 6(a));
 - (ii) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (section 6(c));
 - (iii) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers (section 6(d)); and
 - (iv) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6(e)).

8.4 The Council proposes through PC14 that the existing provisions relating to water body setbacks are retained (only applying to the parts of sites affected) in order to protect the relevant values of water bodies and their margins from inappropriate development.

8.5 At the time of notification of PC14, the Council proposed to add a new water body setback overlay on the planning maps (reflecting the existing definitions in the District Plan). As discussed further below, this overlay is no longer proposed, and the Council instead proposes to rely on the operative District Plan provisions.

Submissions and evidence

General

- 8.6 As set out in the s42A Report of Ms Hansbury there are a number of submissions in support of the water body setback QM.³³
- 8.7 There are also some submissions opposing the water body setback QM generally. The higher order directions and the Plan's strategic objectives are clear in their aim to protect the qualities of areas/ sites containing cultural or natural features or ecological habitats of national importance from inappropriate subdivision, use and development. Ms Hansbury therefore considers these submissions should be rejected.³⁴
- 8.8 Kāinga Ora-Homes and Communities (**Kāinga Ora**) sought in its submission that 'Environmental Asset Waterways' and 'Network Waterways' not be included as a QM in the absence of a site-by-site assessment demonstrating that MDRS development would be inappropriate. However, Mr Tim Joll's planning evidence notes that Kāinga Ora no longer wishes to pursue its submission on water body setbacks.³⁵

Overlay

- 8.9 Some submissions take issue with the water body setback QM overlay introduced by PC14.³⁶ Ms Hansbury agrees that there are inaccuracies in the position of some waterways and extent of applicable setback on the maps. She considers that the proposed new overlay should be removed from the planning maps (and instead the existing setback provisions should be relied on for identifying the area to which the QM applies).³⁷

Site-specific matters

- 8.10 A number of submitters sought site-specific relief in respect of the water body setback QM, including at:³⁸
- (a) 65 and 67 Richmond Avenue, Halswell (Greg Olive, 2.4);

³³ Paragraphs 6.19.17 and 60.20.5.

³⁴ Paragraphs 6.19.1 to 6.19.6.

³⁵ Statement of evidence of Tim Joll dated 20 September 2023, paragraph 1.2 available at <https://chch2023.ihp.govt.nz/assets/Evidence-20-September/Kainga-Ora-Homes-and-Communities-834-2082-2099-Evidence-Tim-Joll-Planning.pdf>.

³⁶ Including submission of WDL Enterprises Limited and Birchs Village Limited (#704.7) available at https://makeasubmission.ccc.govt.nz/getFileOpen.aspx?src=i&r=1&dRef=KSCA5Y&_id=1696977846109, submission of Davie Lovell-Smith Limited (#914.18) available at https://makeasubmission.ccc.govt.nz/getFileOpen.aspx?src=i&r=1&dRef=2F0YVA&_id=1696978036049,

submission of Milns Park Limited (#916.12) available at https://makeasubmission.ccc.govt.nz/getFileOpen.aspx?src=i&r=1&dRef=7WB0W6&_id=1696978148411

and submission of Holly Lea Village Limited (#49.1) available at https://makeasubmission.ccc.govt.nz/getFileOpen.aspx?src=i&r=1&dRef=BPC07B&_id=1696978198603.

³⁷ s42A report of Anita Hansbury, paragraph 6.19.5.

³⁸ Paragraphs 6.18.2 and 6.19.10 to 6.19.16.

- (b) 123 Fendalton Road (Holly Lea Village, 49.1);
- (c) 41 Rountree Street (Andy Hall, 79.1);³⁹
- (d) 135 to 138 Wainoni Road (Heather Woods, 107.29 and Carmel Woods 792.13);
- (e) 147 Cavendish Road (Summerset Group Holdings Limited, 443.12 and 443.15); and
- (f) 287 and 297 Centaurus Road (Ivan Thomson, 324.2).

8.11 Ms Hansbury explains that her proposed removal of the overlay addresses many of the issues raised.⁴⁰ The relevant setback will be able to be applied based on the actual location of the banks of the water body, rather than by reference to a potentially incorrect or outdated mapped location of the water body. If the overlay was to remain, it would need to be corrected as described by Ms Hansbury in her rebuttal evidence.⁴¹

8.12 The Summerset Group Holdings submission explains that the waterway at 147 Cavendish Road no longer exists. Ms Hansbury has subsequently proposed removing the blue line indicating a waterway on the 147 Cavendish Road Property,⁴² thereby confirming the QM would not apply.⁴³

8.13 It is respectfully submitted that the Panel should recommended that the water body setbacks QM is adopted as notified, but with the modifications recommended in the s42A report and rebuttal evidence of Ms Hansbury (including the removal of the water body setbacks QM overlay from the planning maps). This recommendation also aligns with the recommendation of Mr Langman's evidence which considered the Council submission (#751).⁴⁴

³⁹ In her rebuttal evidence at paragraph 13, Ms Hansbury clarifies her references to the Fendalton Road and Rountree Street submissions / submitters.

⁴⁰ s42A report of Anita Hansbury, paragraph 6.19.5 and 6.19.11 and Statement of rebuttal evidence of Anita Hansbury, paragraph 14.

⁴¹ Statement of rebuttal evidence of Anita Hansbury, paragraph 19.

⁴² s42A report of Anita Hansbury, paragraph 6.19.14 and page 88 of Appendix 3.

⁴³ In their rebuttal evidence, Ms Ratka and Mr Norton clarify that they agree with Ms Hansbury given that the water body no longer exists.

⁴⁴ Available at <https://chch2023.ihp.govt.nz/assets/Evidence-20-September/Christchurch-City-Council-751-Evidence-Marcus-Langman.pdf>.

9. OPEN SPACE ZONES

Approach to Open Space Zones in District Plan

9.1 Open Space Zones are identified on the District Plan planning maps and the maps in Appendix 18.11. The District Plan objectives for open space seek to provide a variety of open spaces and recreational facilities that meet a range of community needs while protecting and enhancing the inherent qualities of natural open spaces and water bodies. Policy 18.2.2.1 provides a list of all open space zones, including the description of their function and character.⁴⁵

Proposed approach to the Open Space Zones in PC14

9.2 The Open Space QM is an 'existing QM' in accordance with s77Q (and s77O(f)) because:

- (a) the relevant provisions are set out in the operative District Plan; and
- (b) section 77O(f) provides for the protection of public open space areas from intensification as a QM.

9.3 Open Space Zones are not a 'relevant residential zone' in terms of s77I, but as the scope of intensification influence of NPS-UD Policy 3 on 'urban non-residential zones' in terms of s77O is undefined, it is proposed as a QM for the avoidance of doubt.

9.4 The Council proposes through PC14 that the existing provisions relating to Open Space Zones are retained in order to protect the relevant values from inappropriate development.

Submissions and evidence

9.5 As set out in the s42A report of Ms Hansbury, there are a number of submissions in support of the Open Space Zones QM.⁴⁶

9.6 Ms Hansbury has recommended that a submission by Greg Olive (2.4) seeking a correction to the Open Space Water and Margins Zone (along with the water body setback QM, as discussed above) in respect of 65 and 67 Richmond Avenue be accepted.⁴⁷

⁴⁵ The zones listed are Open Space Community Parks Zone, Open Space Metropolitan Facilities Zone, Open Space Metropolitan Facilities Zone, Open Space Metropolitan Facilities Zone, Open Space Water and Margins Zone, Open Space Water and Margins Zone and Open Space Coastal Zone.

⁴⁶ paragraphs 6.21.2 and 6.24.1 to 6.24.2.

⁴⁷ Paragraph 6.19.11.

9.7 Historic Places Canterbury (835.12) seeks an Interface Area QM, similar to that proposed for Riccarton Bush, to provide a buffer for the heritage areas of Hagley Park, Cranmer Square and Latimer Square (which are covered by the Open Space Zones QM). Ms Hansbury explains:

- (a) these are relatively large open spaces containing a number of established large trees of considerable height;
- (b) unlike Riccarton Bush, these parks are encircled by roads, which provide a 'protective' buffer around the parks that allows for sunlight access and separation from any built development on the other side of the road; and
- (c) there is no supporting evidence to support concerns about shading or visual dominance from high buildings.

9.8 Ms Hansbury therefore recommends that the submission point be rejected.⁴⁸

9.9 Mr Tim Joll's planning evidence confirms that Kāinga Ora no longer wishes to pursue its submission seeking the deletion of the recreation zone element of the Open Space Zones QM.⁴⁹

9.10 It is respectfully submitted that the Panel should recommend that the Open Space QM is adopted as notified, but with the modifications recommended in the s42A report of Ms Hansbury.

10. SPECIFIC PURPOSE (ŌTĀKARO AVON RIVER CORRIDOR) ZONE

Approach to the SPOARC Zone in District Plan

10.1 The SPOARC was zoned Specific Purpose (Flat Land Recovery) Zone following the 2010/2011 Canterbury Earthquakes. The area was later rezoned to implement the Ōtākaro Avon River Corridor Regeneration Plan (**Regeneration Plan**) and was inserted into the District Plan as the SPOARC Zone through s71 of the Greater Christchurch Regeneration Act 2016.

10.2 The priorities and intended activities for different areas of the Ōtākaro Avon River Corridor are set out in Chapter 13.14 of the District Plan. The SPOARC zone is focused on maintaining and enhancing the natural open space character of the area, and mitigation of natural hazards such as flooding.

⁴⁸ Paragraph 6.22.6.

⁴⁹ Statement of evidence of Tim Joll dated 20 September 2023, paragraph 1.2.

Proposed approach to the SPOARC Zone in PC14

10.3 The majority of the SPOARC is an 'existing QM' in accordance with s77K and s77Q because:

- (a) the relevant provisions are set out in the operative District Plan; and
- (b) the SPOARC is 'open space' in terms of s77I(f) and s77O(f) (other than the private properties within the zone, as discussed below).

10.4 The Council proposes through PC14 that the existing provisions relating to the SPOARC are retained for the majority of the SPOARC in order to protect the relevant values from inappropriate development.

10.5 While the majority of the SPOARC is considered to be 'open space provided for public use' in terms of section 77O(f), the private properties within the zone that continue to be used for pre-earthquake activities are not. Activities on a number of these private sites are subject to 'alternative zone' rules as specified in Chapter 13.14, Appendix 13.14.6.2. Three privately-owned sites discussed below currently do not have alternative zoning but that is proposed to be added to reflect private ownership of the sites.

10.6 Three privately-owned sites are within the walkable catchment of the City Centre Zone.⁵⁰ The default position under NPS-UD Policy 3 and the MDRS is that at least six storey building heights would be enabled at those three properties.

10.7 An analysis of the characteristics of those sites (namely, geotechnical or other hazards and fit with the balance of the SPOARC) was undertaken in accordance with s77R, with the support of evidence from David Little and Marie-Claude Hébert.⁵¹ Based on the issues considered in that expert evidence and the s32 report conclusions, the following 'alternative zoning' was recommended by Ms Hansbury:⁵²

- (a) 254-256 Fitzgerald Avenue and 5 Harvey Terrace – MRZ;
- (b) 238 Fitzgerald Avenue – RSDT (Residential Suburban Density Transition - current alternative zoning); and
- (c) 57 River Road – RSDT (current alternative zoning).

⁵⁰ No other privately-owned SPOARC sites are within the walkable catchment of a proposed centre.

⁵¹ Ms Hébert's evidence considers only the 254-256 and 5 Harvey Terrace Site; Mr Little considered all three sites.

⁵² s42A report of Anita Hansbury, paragraph 5.4.31.

10.8 Those alternative zonings amount to a restriction on potential NPS-UD Policy 3 intensification that the Council considers is justified.

Submissions and evidence

10.9 As set out in the evidence of Ms Hansbury, there are a number of submissions in support of the SPOARC QM.

10.10 The Glenara Family Trust (91) seeks changes in relation to 254-256 Fitzgerald Avenue and 5 Harvey Terrace.⁵³ As noted above, alternative zoning is proposed for this site, and Ms Hansbury also proposed further rule changes in her s42A report in light of the Glenara Family Trust submission that would provide an additional restricted discretionary rule for applications that would not meet the built form and activity standards.⁵⁴

10.11 Ms Hansbury included a s32AA analysis of those amendments in her s42A report.⁵⁵ In his planning evidence for the Glenara Family Trust, Mr David Mountford supports Ms Hansbury's recommendations.⁵⁶

10.12 Mr Tim Joll's planning evidence notes that Kāinga Ora no longer wishes to pursue its submission requesting the deletion of the SPOARC QM.⁵⁷

10.13 It is respectfully submitted that the Panel should recommend that the SPOARC QM is adopted as notified, but with the modifications recommended in the s42A report of Ms Hansbury.

11. SPECIFIC PURPOSE (CEMETERY) ZONE

11.1 The Special Purpose (Cemetery) Zone can be considered as a form of open space zone based on the zone description and the outcomes sought for cemeteries, including historic cemeteries no longer used for internment. A QM is proposed on the same basis as for the Open Space Zones.

⁵³ As set out in David Mountford's planning evidence for Glenara Family Trust, the Trust has a private plan change (PPC11) before the Council that seeks to enable development at the property. PPC11 has been placed on hold while PC14 progresses.

⁵⁴ s42A report of Anita Hansbury, paragraphs 6.23.1 to 6.23.9. Annexure A to the Joint Statement of Hazards Experts dated 5 October 2023 lists the agreement between Marie-Claude Hébert, Jesse Dykstra and Andrew Hurley in relation to this submission. The joint statement is available at <https://chch2023.ihp.govt.nz/assets/Joint-Witness-Statements/Joint-Expert-Witness-Conferencing-of-Hazards-Experts-Hazards-5-October-2023.pdf>.

⁵⁵ s42A report of Anita Hansbury, paragraph 6.23.7 and Table 3.

⁵⁶ Statement of primary evidence of David Laurence Mountford dated 20 September 2023, paragraph 27 available at <https://chch2023.ihp.govt.nz/assets/Evidence-20-September/Glenara-Family-Trust-91-2070-Evidence-David-Mountford-Planning.pdf>.

⁵⁷ Statement of evidence of Tim Joll dated 20 September 2023, paragraph 1.2.

- 11.2 Provisions for the zone are contained in sub-chapter 13.2 of the District Plan. The provisions and extent of the zone are not proposed to be changed through PC14.
- 11.3 One cemetery site is captured within a NPS-UD Policy 3 catchment, which is the historic Barbadoes Street Cemetery site. This site is in public ownership and is no longer used for internment or cremation. It is scheduled in the Plan as a highly significant historic heritage item and setting.
- 11.4 No submissions were received specifically in relation to the Specific Purpose (Cemetery) Zone and its proposed status as a QM.⁵⁸
- 11.5 It is respectfully submitted that the Panel should recommended that the Special Purpose (Cemetery) Zone QM is adopted as notified.

12. SLOPE INSTABILITY

Approach to Slope Instability in District Plan

- 12.1 Provisions relating to slope instability in the District Plan are set out in Chapter 5 Natural Hazards. The particular areas identified comprise of Cliff Collapse Management Area 1, Cliff Collapse Management Area 2 and Rockfall Management Area 1 as defined in the operative District Plan. The rules for these areas include:
- (a) Subdivision is non-complying (and prohibited where the subdivision is solely located within the Cliff Collapse Management Area 1);
 - (b) Buildings and structures are non-complying (some exceptions) within the Cliff Collapse Management Area 2 and Rockfall Management Area 1; and
 - (c) Buildings and structures are prohibited (some exceptions) within the Cliff Collapse Management Area 1.

Proposed approach to the Slope Instability QM in PC14

- 12.2 The Slope Instability QM is an 'existing QM' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:
- (a) the relevant provisions are set out in the operative District Plan; and

⁵⁸ s42A report of Anita Hansbury, paragraph 6.21.1.

- (b) the management of significant risk from natural hazards, such as slope instability, is a matter of national importance that decision makers are required to recognise and provide for under section 6(h).

12.3 The Council proposes through PC14 that the existing provisions relating to Slope Instability are retained (only applying to the parts of sites affected) in order to ensure inappropriate development does not occur in these areas, putting more people and property at risk of harm.

Submissions and evidence

12.4 As set out in the s42A report of Ms Ratka, there are a number of submissions in support of the Slope Instability QM.⁵⁹

12.5 Environment Canterbury seeks new QMs for Slope Instability Management Areas to exclude “severe” erosion class land from further subdivision and development. In his evidence for the Council, Dr Dykstra considers that intensification of hillside land that is subject to severe erosion hazard may not be appropriate as there is a clear link between slopes that are subject to instability (e.g. landslides or rockfall) and high levels of erosion. However, he considers the Council's proposed Slope Instability QM and existing controls should be sufficient to avoid any potential increase in risk due to slope instability.⁶⁰ Environment Canterbury did not submit expert evidence in support of its request for this new QM.

12.6 In submission S231.1, Phil Elmey seeks that Council adopt the Building Code guidance document for design of passive protection structures as an acceptable method of reducing rockfall hazard on a site-specific basis. In his evidence, Dr Dykstra comments that, while it provides useful design guidance, the document is not an acceptable method for reducing site-specific rockfall hazard. His evidence explains that while passive rockfall protection may reduce the short-term risk, the actual hazard remains.

12.7 Submission S240.1, Ruth Dyson and submission S368.1, Karen Theobald request that for those homes in the Port Hills which have had rockfall protection structures erected, there should be an additional overlay in the District Plan identifying that even though these homes are in a rockfall risk area, that these specific homes have rockfall protection structures in place.

⁵⁹ s42A report of Brittany Ratka, page 122 of Appendix A.

⁶⁰ Statement of evidence of Dr Jesse Leif Dykstra dated 11 August 2023, paragraph 76 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/19-Dr-Jesse-Dykstra-Statement-of-evidence-final.PDF>.

12.8 In his evidence, Dr Dykstra provides a helpful outline of the existing slope instability areas, the Annual Individual Fatality Risk certification and the issue with reliance on existing hazard mitigation works. He considers that existing hazard mitigation works (including rockfall protection structures) are not an appropriate basis for an additional slope hazard overlay, because the hazard itself remains.⁶¹ Ms Ratka, relying on Dr Dykstra's expert opinion, considers intensification would not be appropriate as of right within such areas, and so current controls should remain.⁶²

12.9 It is respectfully submitted that the Panel should recommend that the Slope Instability QM is adopted as notified.

13. HIGH FLOOD HAZARD AREAS

Approach to flood hazards in the District Plan

13.1 The District Plan identifies flood hazard risks areas based on modelling of where annual exceedance probabilities for rainfall events or tide events (allowing for climate change) are expected to exceed certain levels. High Flood Hazard Management Areas (**HFHMAs**) and Flood Ponding Management Area (**FPMAs**) are mapped. Provisions relating to these flood hazards are primarily set out in Chapter 5.4 of the District Plan, and the planning framework seeks to manage the risks of subdivision, use, or development where it will increase the potential risk to safety, well-being and property due to the flood hazard.

Proposed approach to flood hazards in PC14

13.2 The HFHMAs and FPMAs QMs are 'existing QMs' in accordance with s77K and s77Q (and s77I(a) and s77O(a)) because:

- (a) the relevant provisions are set out in the operative District Plan; and
- (b) natural hazards, such as flooding, are a matter of national importance that decision makers are required to recognise and provide for under section 6(h).

13.3 The Council proposes through PC14 that the existing provisions relating to HFHMAs and FPMAs are retained (only applying to the parts of sites

⁶¹ Paragraphs 43 to 48.

⁶² s42A report of Brittany Ratka, paragraph 9.4.38.

affected) in order to ensure inappropriate development does not occur in these areas, putting more people and property at risk of harm.

Submissions and evidence

13.4 As set out in the s42A Report of Ms Ratka there are:⁶³

- (a) a number of submissions in support of the two flood hazard QMs; and
- (b) no submissions specifically opposed to the two proposed flood hazard QMs.

13.5 A number of submitters seek additional controls and/or additional QMs in relation to stormwater or flooding effects generally. As Ms Ratka explains in her s42A report, the Council has not sought to amend existing controls in the plan and does not have sufficient information to introduce additional QMs.⁶⁴

13.6 In his evidence for the Council, Mr Norton provides a detailed response to concerns around flooding. He acknowledges that increases to flood risk in localised areas could result from intensification enabled by PC14, along with increased demand on the Council's stormwater network infrastructure.

13.7 He considers the HFHMA and FPMA QMs (along with the water body setback and Coastal Management Area QMs) will reduce the number of additional dwellings being constructed within areas of stormwater and flood related hazards, but will not necessarily prevent adverse flooding effects occurring as a result of increases in impervious surfaces.⁶⁵ Overall, Mr Norton support the QMs as a pragmatic approach to address flooding and stormwater management.

13.8 Environment Canterbury seeks that the upper Halswell River catchment areas be covered by a QM that prevents further intensification because of inadequate stormwater infrastructure and downstream flooding effects. Mr Norton explains in his evidence that he does not support that submission, noting that:⁶⁶

- (a) the Halswell River catchment is similar to the other Christchurch rivers in terms of flooding effects and existing infrastructure provision; and

⁶³ Page 122 of Appendix A.

⁶⁴ Paragraphs 9.4.19 and 9.4.25.

⁶⁵ Statement of primary evidence of Robert Brian Norton dated 11 August 2023, paragraph 84 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/44-Brian-Norton-Statement-of-evidence-final.PDF>.

⁶⁶ Paragraph 83.

(b) it would be inequitable to introduce a Halswell River catchment QM, but not equivalent QMs for the Heathcote, Avon or Styx catchments would result an inequitable.

13.9 Mr Norton addresses this issue in more detail in his rebuttal evidence, responding to Mr Surman's evidence on behalf of Environment Canterbury.⁶⁷

13.10 The evidence of Mr Ike Kleynbos (to be filed on 16 October) will address Environment Canterbury's additional proposed QM in relation to stormwater and sedimentation in the Port Hills. As that proposed QM relates to a residential zone, and as Mr Kleynbos will appear at the residential zone hearing set down for week 4, the Council intends to address that matter substantively in the week 4 hearings.

13.11 Ms Ratka notes that the Council is undertaking preparatory work for a future plan change considering flooding matters comprehensively at a city-wide scale.⁶⁸

13.12 It is respectfully submitted that the Panel should recommend that the flood hazard QMs are adopted as notified.

DATED 11 October 2023



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T J Ryan / M L Mulholland
Counsel for the Christchurch City Council

⁶⁷ Rebuttal evidence of Robert Brian Norton dated 9 October 2023, paragraphs 9 to 23 available at <https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/44.-Rebuttal-Evidence-Brian-Norton.pdf>.

⁶⁸ s42A report of Brittany Ratka, paragraph 9.4.25.